IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTHDAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No: 25810 of 2003

Between:

1 G.Pyda Rao, S/o Narayana,
Food Corporation of India, Visakhapatnam,
R/o Yarada, Gandhigram Post, Visakhapatnam.
2 M.Kittanna, S/o Appanna,
R/o Kota Veedhi, Amue Sorangaveedhi,
Visakhapatnam.
3 G.Venkata Ramana, S/o Simhachalam,
Food Corporation of India, R/o Santhi Nagar,
Kalisapuram Road, Visakhapatnam.
4 B.Rama Rao, S/o Ramulu,
Food Corporation of India, R/o Yarada, Gandhigram Post,
Visakhapatnam-5
5 B.Appa Rao, s/o Venkanna,
Food Corporation of India, R/o Yarada, Gandhi Gram Post,
Visakhapatnam.
6 Bathina Appa Rao, S/o Musalayya,
Food Corportion of India, R/o Thikkavani Palem,
Kancharapalem, Visakhapatnam.
7 Pilla Sannyasi Rao, S/o Sanyasi,
Food Corporation of India, Visakhapatnam.
R/o Yarada, Gandhigram Post, Visakhapatnam.
8 Reddi Sanyasi Rao, S/o Sanyasi,
Food Corporation of India, Visakhapatnam, R/o Malkapuram, Harijan Street,
High School Road, Visakhapatnam.
9 S.Satya Rao, S/o Pydanna,
Food Corporation of India, Visakhapatnam, R/o Yarada, Ghandigram
Post, Visakhapatnam.
10 Muthyala Naidu, S/o Narsimhulu,

Food Corporation of India, Visakhapatnam, R/o Advivaram Panchayathi, Visakhapatnam.

11 B.Peda Appa Rao, S/o Kankayya,
Food Corporation of India, Visakhapatnam,
R/o Gandhigram Post, Visakhapatnam.

..... PETITIONERS

AND

1 Food Corporation of India, rep. by its Managing Director, Barakhamba Lane, New Delhi.

2 The Zonal Manager, Food Corporation of India, South Zone,
Hadows Road, Chennai.

3 The Senior Regional Manager, Food Corporation of India,
3rd Floor, HAKA Bhavan, Opp: Public Gardens, Hyderabad.

4 Union of India, rep.by its Secretary to the Government, Food & Civil Supplies Department,
Ministry of Food, Krishi Bhavan, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus: (a) declaring the action of the respondents in not regularizing the services of the petitioners herein as Regular Watchmen in Food Corporation of India on par with the petitioners in Writ Petition No.20484/1997 dated 16-3-1997 and also declare the action of the respondents in retiring the petitioners under Voluntary Retirement Scheme vide circular No.13 dated 22-9-2003, as arbitrary, illegal, violative of Articles 14 & 16 of the Constitution of India. (b) direct the respondents to regularise the services of the petitioners as regular watchmen in FCI on par with the petitioners in Writ Petition No.20484 of 1997 dated 16-3-1997 with all consequential benefits; (c) direct the respondents not to voluntary retire /retrench the petitioners in terms of Circular No.13 dated 22nd September, 2003, since the scheme does not apply to Casual Labour.

Counsel for the Petitioners: MR.ABHINAND KUMAR SHAVILI

Counsel for the Respondents: Ch.E. LAKSHMI KUMARI (SC for Food Corporation of India)

The Court made the following:

ORAL ORDER:-

This Writ Petition is filed to declare the action of the respondents in not regularizing the services of the petitioners herein as Regular Watchmen in Food Corporation of India on par with the petitioners in W.P.No.20484/97 dt.16.03.1997 and also in retiring the petitioners under Voluntary Retirement Scheme vide Circular No.13, dt.22.09.2003, as arbitrary and illegal.

It is the case of the petitioners that they were initially appointed as Gunny Watchman (Casual workers) in Food Corporation of India during 1977-78. Since then, they have been discharging the duties connected with and related to loading and unloading operations of Food Corporation of India and the wages were being paid by it directly. The Zonal Manager, West, Food Corporation of India in the month of June 1986 initiated proceedings to absorb the petitioners as regular watchmen and sought their willingness. Accordingly, the petitioners expressed their willingness for absorption and also to go and work in any part of the Country, even in the West Zone. But, on the assurance given by the Senior Regional Officer that the petitioners will be absorbed in the Andhra Pradesh Region as regular watchmen, the respondents did not regularize their services. Therefore, the petitioners raised a dispute before the Assistant Commissioner of Labour (Central), Visakhapatnam, then the Management came forward before the Commissioner and entered into a settlement on 14.01.1988 with the petitioners and agreed that all the 122 Gunny

Watchmen who had been engaged by the Food Corporation of India will be entitled to the Attendance allowance, Weekly off, Nine labour holidays with attendance allowance and Contributory Provident Fund benefits, but the respondents did not act according to the terms of the agreement and did not consider the case of the petitioners for regularization as regular watchmen in Food Corporation of India.

Some of the Casual Gunny Watchmen had filed W.P.No.5623/95 and the same was disposed of by this Court on 18.01.1997 directing the respondents therein to consider the case of the petitioners in the above Writ Petition for regularization in accordance with the rules. In pursuance of the directions of this Court, the respondents rejected the case of the petitioners. Therefore, the petitioners in W.P.No.5623/95 filed another W.P.No.20484/97 questioning the orders of rejection dated 14.05.1997. This Hon'ble Court allowed the said writ petition directing the respondents to take steps to regularize the services of the petitioners within 12 weeks. In pursuance of the said direction, the respondents regularized the services of four petitioners as regular watchmen in Food Corporation of India with effect from 23.07.99 and also regularized all other similarly placed persons with effect from 24.11.99 to 06.12.99 and rejected the case of other employees.

By recognizing the services of the petitioners, the management of the Food Corporation of India placed them under "C" category vide order dated 31.07.1993 and further they were given 'B' category wages vide orders dated 18.06.1997. The petitioners also stated that when the respondents did not regularize their services as regular watchmen on par with the petitioners in W.P.No.20484 of 1997, they inducted into the Port Operation Gang during the year 1998 and the respondents are extracting the work of regular Khalasi from them without regularizing their services as regular Khalasi and continued all the petitioners on causal basis. It is also stated that the Food Corporation of India by taking approval of the Government introduced Voluntary Retirement Scheme and as per the said scheme, voluntary retirement will not be applicable to labour working as casuals. Even though the petitioners are not regular employees of Food Corporation of India, the respondents are intending to remove them by offering Voluntary Retirement Scheme and in the event if they do not opt for the said scheme, the respondents are threatening to retrench them from service as per the provisions of the Industrial Disputes Act. Hence, this writ petition.

The learned counsel appearing for the petitioners contended that they were appointed directly by the respondents and as the respondents paid their wages, their services have to be regularized. He further contended that all the petitioners were discharging the duties of security and safe loading and unloading operations. It is further contended that when the petitioners expressed their willingness to absorb them as regular watchmen, the third respondent assured them that they would be absorbed as regular watchmen. Some of the persons who were appointed as Gunny Watchmen (Casual workers) during the year 1977-78 filed W.P.No.20484 of 1997 and in pursuance of the directions given by this Court, dated 16.03.1999, the services of four petitioners were regularized with effect from 23.07.1999 and also other similarly situated persons with effect from 24.11.1999. Learned counsel also contended that the petitioners are similarly placed Gunny Watchmen, therefore, their services should be regularized in pursuance of the directions of this Court. He also contended that the Voluntary Retirement Scheme would not applicable to the labour working as casuals. Under the guise of Voluntary Retirement Scheme, the respondents are trying to remove the petitioners from their service. Hence, he prays to allow the writ petition.

On the other hand, the learned standing counsel appearing for the respondents contended that the petitioners raised an Industrial Dispute seeking regularization of their services in the corporation and after prolonged discussions, a settlement was arrived at on 24.12.1998 between the Management and the petitioners providing extension of certain benefits and in pursuance of the said settlement, dated 26.3.1997, the present petitioners opted to come under category ‘C’, and therefore, the present petitioners were upgraded and designed as category ‘B’, and therefore, the case of the petitioners does not stand on par with the remaining Gunny Casual Workers and it is the policy decision taken by the Food Corporation of India raising Voluntary Retirement Scheme and the same cannot be challenged.

It is not in dispute before this Court that the Joint Manager, Port Operations, Visakhapatnam, engaged 122 Gunny Casual Workers on ‘no work no pay’ basis for miscellaneous work of Port Operations Office at Visakhapatnam. The nature of the duties are 1) collection/bundling of released gunnies of export vessels, 2) carrying gunny bundles and collection of scattered gunnies at the Sharf/Transit shed, and 3)

other miscellaneous work like closing of wagon doors, carrying lights, stitching of cut on torn bags and collection of loose grain and filling the gunnies which are purely in the nature of labour work.

It is also not in dispute that as per the directions of this Court in W.P.No.20484 of 1997, dated 16.03.1999, the respondents are directed to take steps to regularize the services of all the petitioners therein, and thereupon, the respondents regularized the services of four petitioners of the said writ petition as regular watchmen with effect from 23.07.1999 and also regularized all other similarly placed persons with effect from 24.11.1999 to 06.12.1999.

The question is whether the present petitioners are similarly placed to that of the petitioners in the W.P.No.20484 of 1997 or not.

It is not disputed before this Court that a settlement was entered into by the petitioners and the respondents before the Assistant Commissioner of Labour on 14.12.1998 whereunder the respondents agreed in terms of settlement that all the 122 Gunny Watchmen who have been engaged by the Food Corporation of India for the work connected with Stevedoring will be entitled to the following benefits with effect from 01.11.1998.

"1. Attendance allowance

2. Weekly off;

3. Nine labour holidays with attendance allowance;

4. Contributory Provident Fund."

It is also not in dispute that in pursuance of the said settlement the respondents are extending the above said benefits to the petitioners from the date of settlement. In pursuance of the settlement, dated 26.09.1992, between the Visakhapatnam Port Employees Union and the Food Corporation of India

Management, it was agreed that 12 Gunny Casual Workers out of 122 Gunny Casual Workers who were already working as loaders in regular Gang vacancies are designated as Special-C category workers with all attendant benefits applicable to Special-C category. Thus, the present petitioners switched themselves over to Special-C category workers and joined the gangs as loaders. In pursuance of further settlement which took place in the year 1997 all the Special-C workers who are 30 in number including the present petitioners were upgraded and designated as Category-B workers with all attendant benefits applicable to them with effect from 01.09.1996 and as such they are continued as 'B' category workers even till today. When the same post of Special-C category was offered to the remaining Gunny Casual workers by order dated 14.05.1997 by the competent authority, the same was not accepted by 97 surviving petitioners out of 103 petitioners in W.P.No.5623 of 1995. Four out of 97 petitioners in W.P.No.5623 of 1995, filed another W.P.No.20484 of 1997 and the same was disposed of by this Court on 16.03.1999 directing the respondent-Corporation to consider the case of the petitioners therein for regularization. Then the Management appointed the petitioners in W.P.No.20484 of 1997 as Watchmen (Godown) prospectively with the approval of Government of India. Therefore, the case of the present petitioners is not on similar footing to that of the petitioners in W.P.No.5623 of 1995 and W.P.No.20484 of 1997. Since the present petitioners were switched over to the Gang workers long back i.e., in the year 1992 and availing the benefits of Special-C category and also the benefits of 'B' category with effect from 01.09.1996, the question of regularization of the present petitioners does not arise.

Since, the petitioners have given their option as regular casual labour in Special-C category, and among the remaining 103 workers, some of them were the petitioners in W.P.No.20484 of 1997, who continued as Gunny Casual Workers, their case stands on a different footing. The present petitioners must have given option to categorize them as category-C casual labour in anticipation of more benefits. But, now they turned round and said that their case is on par with the other petitioners whose services have been regularized. The services of some of the persons who were appointed along with the petitioners, as Gunny Casual Workers, have not opted for regular casual labour under 'C' category; their services have been regularized.

Since the petitioners herein have been receiving all the benefits in pursuance of the settlement, their cases cannot be considered on par with the petitioners in W.P.No.20484 of 1997. Since the petitioners therein have foregone all the benefits that were offered to them in pursuance of the settlement, their case stands on a different footing. The petitioners having accepted and switched themselves over to category 'C' workers and thus they are getting the benefits right from the year 1992 onwards, the petitioners are not entitled to be regularized in view of the fact that the petitioners are bound by the terms of the settlement dated 24.12.1998 and further settlement entered into between the petitioners and the respondents dated 26.09.1992 and further settlement dated 26.03.1997. All these settlements are entered into between the parties under Section 18(1) of the Industrial Disputes Act, 1947 and Rule 53 of the Industrial Disputes (Central) Rules 1957. Since the settlement arrived at by the parties is of statutory settlement, the petitioners had to bound by the conditions laid down in the settlement. It is not the case of the petitioners that the respondents have violated any of the terms and conditions of any of the settlements. None of the terms and conditions in the settlements indicates about regularization. These settlements would indicate that some of the Casual workers and Gunny Watchmen have to be re-designated as Special-C category, and thereafter, to the next higher category. In pursuance of the terms and conditions of the settlements, the corporation has fulfilled its obligations in re-designating the petitioners as 'C' grade employees in the first instant and later as 'B' grade employees. Now the respondents cannot turn round and say that their services have to be regularized. In the absence of anything contra in the settlements, the services of the petitioners cannot be regularized.

The respondents – Corporation has introduced Voluntary Retirement Scheme in the year 2003 with the approval of Government of India to dispense with idle and surplus labour under the scheme by a circular dated 22.09.2003. Some of the employees opted for Voluntary Retirement Scheme. It is also made clear that under this scheme if the response of the employees are poor then they will resort to retrenchment of idle and surplus workers. In the meantime, the present petitioners filed the present writ petition. The petitioners have not opted for Voluntary Retirement Scheme though they are eligible for the said scheme. The reason given by the respondents for introducing the Voluntary Retirement Scheme is that the

Food Corporation of India Port Operations Office, Visakhapatnam, was closed with effect from 20.11.2000 as a policy (All India) basis and with the approval of Government of India besides other Port Operation Offices. As a result of closure of Port Operation Office, the scheme was introduced and the same cannot be said to be doing unfair labour practice or for any other reason. The policy decision taken by the Government cannot be said to be arbitrary and illegal since it uniformly applies to all the employees. The contention of the learned counsel for the petitioners that the scheme is for only to the regular employees of Food Corporation of India, but not to the present petitioners who are working as Casual labour, the same is devoid of merit, since the petitioners are the regular employees of the respondents Corporation in 'B' category. Even in the counter, the respondents have stated that the petitioners are regular Casual labour in 'C' category. Unless the Corporation under Articles 14 and 16 of Constitution of India violates the Voluntary Retirement Scheme, the same cannot be challenged. There is no fatal foundation with regard to Articles 14 and 16 as to how the scheme introduced by the respondents-Corporation is violative of Articles 14 and 16 of the Constitution of India. The specific reason has been given for introducing of Voluntary Retirement Scheme and that reason cannot be said to be arbitrary or discriminating.

In view of the aforesaid reasons, this Court does not find any merit in the Writ Petition and the same is dismissed by vacating the interim order, dated 22.12.2003. No orders as to costs.

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04-07-2005

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1 The Managing Director, Food Corporation of India, Barakhamba Lane, New Delhi.
2 The Zonal Manager, Food Corporation of India, South Zone,
Hadows Road, Chennai.
3 The Senior Regional Manager, Food Corporation of India,
3rd Floor, HAKA Bhavan, Opp: Public Gardens, Hyderabad.
4 The Secretary to the Government, Union of India, Food & Civil Supplies Department,
Ministry of Food, Krishi Bhavan, New Delhi.